

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN AVILA GUTIERREZ,

Petitioner,

v.

WARDEN F.C.I. HERLONG,

Respondent.

No. 2:23-cv-0646 AC P

ORDER

Petitioner, a federal prisoner, filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, together with a request to proceed in forma pauperis.

I. Application to Proceed In Forma Pauperis

Examination of the application reveals petitioner is unable to afford the costs of this action. ECF No. 5. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

II. Background

Petitioner is an inmate currently housed at the Federal Correctional Institution-Herlong (FCI-Herlong) with a projected release date of April 6, 2026. ECF No. 1 at 2. The petition does not identify the court where petitioner was convicted and sentenced or the offense for which he is currently incarcerated.

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1 III. Petition

2 The petition requests that the court order the Bureau of Prisons (BOP) to apply
3 petitioner's earned credits and re-calculate his release date to reflect those credits. Id. at 3.

4 IV. Discussion

5 Petitioner asserts, in what appears to be a form petition, that he has accrued earned time
6 credits under the First Step Act of 2018 (FSA) in an amount "TBD" and that the attached exhibits
7 show that he has earned credits and is eligible to have them applied. ECF No. 1 at 2-3. However,
8 an attached exhibit reflects that petitioner has not accrued any FSA time credits and is ineligible
9 under the FSA, though it does not identify why petitioner is ineligible. Id. at 4. Petitioner also
10 asserts that he is not subject to a final order of deportation and the BOP has removed the language
11 from its program statement barring inmates with possible deportation issues, detainers, warrants,
12 or pending charges from eligibility under the FSA but that inmate sentence adjustments are not
13 being made in a uniform manner. Id. at 2. The attachments to the petition indicate that petitioner
14 has no detainers. Id. at 6.

15 As currently pled, the petition fails to sufficiently specify the grounds for relief upon
16 which petitioner relies. See Rule 2(c)(1)-(2), 28 U.S.C. foll. § 2254¹ (petition shall "specify all
17 the grounds for relief available to the petitioner" and the supporting facts). To the extent
18 petitioner is seeking an order directing the BOP to apply FSA time credits it has determined he
19 has already earned, the attachments to the petition show that petitioner does not have any such
20 credits and is ineligible to accrue them. To the extent petitioner is challenging the determination
21 that he is ineligible to earn FSA time credits, he does not identify the grounds on which he was
22 found to be ineligible or explain why they are improper. Though petitioner references a policy
23 change related to unresolved immigration status, his records indicate that he has no detainers and
24 that he is ineligible to earn FSA time credits. Because the policy petitioner appears to be
25 referencing dealt with the ability of prisoners to apply, rather than earn, FSA time credits,² it does

26 ¹ The (Habeas Rules) are appropriately applied to proceedings undertaken pursuant to 28 U.S.C.
27 § 2241. Rule 1(b), 28 U.S.C. foll. § 2254.

28 ² At one point, BOP policy provided that inmates with unresolved pending charges or detainers,
(continued)

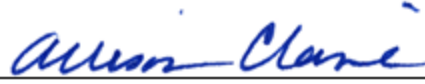
1 not appear that petitioner is being denied the ability to apply earned FSA credits due to an
2 unresolved immigration issue, as he implies. It is therefore unclear on what ground petitioner is
3 challenging his FSA time credit eligibility and it appears that this lack of clarity is due to
4 petitioner's use of a form petition that may not accurately portray his circumstances. Petitioner
5 will therefore be provided an opportunity to file an amended petition that clarifies the grounds on
6 which he is seeking relief and sets out sufficient supporting facts.

7 The court further notes that the original petition was not signed under penalty of perjury,
8 as required by the habeas rules. See Rule 2(c)(15), 28 U.S.C. foll. § 2254. Petitioner is advised
9 that use of the form provided by the court will ensure the amended petition meets this
10 requirement so long as petitioner signs and dates the form where indicated.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Petitioner's request to proceed in forma pauperis (ECF No. 5) is GRANTED;
- 13 2. The petition fails to state a claim upon which relief may be granted and will not be
14 served;
- 15 3. Within thirty days of the service of this order, petitioner may file an amended petition
16 which must bear the case number assigned to this action and the title "Amended Petition";
- 17 4. Failure to file an amended petition will result in a recommendation that this action be
18 dismissed; and
- 19 5. The Clerk of the Court is directed to send petitioner the court's form petition for writ
20 of habeas corpus under 28 U.S.C. § 2241.

21 DATED: May 23, 2023

22 
23 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

24 including unresolved immigration status could earn but not apply FSA time credits. See Fed.
25 Bureau of Prisons, Program Statement No. 5410.01, First Step Act of 2018 - Time Credits:
26 Procedures for Implementation of 18 U.S.C. 3632(d)(4) at 13, 16 (Nov. 18, 2022),
27 https://www.bop.gov/policy/progstat/5410_01.pdf. The policy was later changed to allow those
28 inmates to apply any earned credits if they were otherwise eligible. See Fed. Bureau of Prisons,
Change Notice No. 5410.01 CN-1, First Step Act of 2018 - Time Credits: Procedures for
Implementation of 18 U.S.C. 3632(d)(4) at 2, 17, 20 (Feb. 6, 2023),
https://www.bop.gov/policy/progstat/5410.01_cn.pdf.